

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THE BANK OF NEW YORK MELLON  
FKA, et. al.,

CASE NO. 5:12-cv-00829 EJD

**ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND**

Plaintiff(s),

v.

DEANNE BREWER, et. al.,

[Docket Item No(s). 9]

Defendant(s).

Defendant Deanne Brewer and Third-Party Spencer Brown (collectively, “Defendants”) removed the instant unlawful detainer action filed in Santa Clara County Superior Court by Plaintiffs The Bank of New York Mellon FKA and related entities (“Plaintiffs”). See Docket Item Nos. 1, 11.<sup>1</sup> Plaintiffs purchased the property at issue at a trustee’s sale in October, 2009, after Brewer defaulted on a Deed of Trust secured by the property. See Docket Item No. 11, at Ex. 1.

Plaintiffs now seek an order remanding the case to the state court from which it originated. See Docket Item No. 9. Having reviewed the moving, opposing and reply papers for this motion, the court finds this matter appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for July 13, 2012, will be vacated and Plaintiffs’ motion to remand granted for the reasons stated below.

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<sup>1</sup> Plaintiffs’ request for judicial notice (Docket Item No. 11) is GRANTED in its entirety. Fed. R. Evid. 201(b).

## I. DISCUSSION

2 On what is now these parties' second trip to federal court in the same underlying case,  
3 Plaintiffs argue federal jurisdiction is still nonexistent.<sup>2</sup> The court agrees.

#### A. Legal Standard

5 Removal jurisdiction is a creation of statute. See Libhart v. Santa Monica Dairy Co., 592  
6 F.2d 1062, 1064 (9th Cir. 1979) (“The removal jurisdiction of the federal courts is derived entirely  
7 from the statutory authorization of Congress.”). Only those state court actions that could have been  
8 originally filed in federal court may be removed. 28 U.S.C. § 1441(a) (“Except as otherwise  
9 expressly provided by Act of Congress, any civil action brought in a State court of which the district  
10 courts of the United States have original jurisdiction, may be removed by the defendant.”); see also  
11 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally  
12 could have been filed in federal court may be removed to federal court by defendant.”).  
13 Accordingly, the removal statute provides two basic ways in which a state court action may be  
14 removed to federal court: (1) the case presents a federal question, or (2) the case is between citizens  
15 of different states. 28 U.S.C. §§ 1441(a), (b).

When removal is based on the presence of a federal question, the court looks to the face of a well-pleaded complaint to determine whether a cause of action is created by federal law or whether the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988) (citing Franchise Tax Bd. of California v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28, (1983)). “[I]t must be clear from the face of the plaintiff’s well-pleaded complaint that there is a federal question.” Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). The complaint as it existed at time of removal dictates whether removal jurisdiction is proper. Libhart, 592 F.2d at 1065.

24 An anticipated or even actual federal defense or counterclaim is not sufficient to confer  
25 jurisdiction. Constr. Laborers Vacation Trust, 463 U.S. at 10. It is the removing defendant's burden

<sup>27</sup> The court notes that Judge Susan Illston previously remanded this unlawful detainer action  
<sup>28</sup> sua sponte after Defendants failed to respond to an Order to Show Cause. See Docket Item No. 11,  
at Ex. 2.

1 to establish federal jurisdiction, and the court must strictly construe removal statutes against removal  
 2 jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (“The ‘strong presumption’  
 3 against removal jurisdiction means that the defendant always has the burden of establishing that  
 4 removal is proper.”).

5 **B. Federal Question and Supplemental Jurisdiction**

6 In the underlying Complaint, Plaintiffs allege a single claim for unlawful detainer against  
 7 Brewer. See Docket Item No. 11, at Ex. 1. It is well established that unlawful detainer claims  
 8 themselves do not arise under federal law and, therefore, cannot support federal-question  
 9 jurisdiction. See, e.g., Fed. Nat'l Mortg. Assoc. v. Lopez, No. C 11-00451 WHA, 2011 U.S. Dist.  
 10 LEXIS 44818, at \*1, 2011 WL 1465678 (N.D. Cal. Apr. 15, 2011); GMAC Mortg. LLC v. Rosario,  
 11 No. C 11-1894 PJH, 2011 U.S. Dist. LEXIS 53643, at \*2, 2011 WL 1754053 (N.D. Cal. May 9,  
 12 2011); Wescom Credit Union v. Dudley, No. CV 10-8203 GAF (SSx), 2010 U.S. Dist. LEXIS  
 13 130517, at \*2, 2010 WL 4916578 (C.D. Cal. Nov. 22, 2010).

14 Despite this seemingly clear standard, Defendants appear to assert in the Notice of Removal  
 15 that federal question jurisdiction exists under (1) 28 U.S.C. § 1339 because the Summons and  
 16 Complaint were not properly served and (2) certain federal civil rights statutes because “the Superior  
 17 Court of California contributed and contributes to the deprivation of [Defendants’] rights.” To the  
 18 extent these claims exist, however, they do not appear on the face of Plaintiffs’ single-count  
 19 Complaint, nor can they confer federal jurisdiction as an independent defense or counterclaim. See  
 20 Metro Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (holding jurisdiction must appear on the face  
 21 of the complaint); see also Hunter v. Philip Morris USA, 582 F.3d 1039, 1042-43 (2009) (holding  
 22 jurisdiction cannot rest on actual or anticipated defense).<sup>3</sup>

23 In addition, 28 U.S.C. § 1442 - which applies only in cases involving government agencies  
 24 and individuals - is inapplicable to this case between private parties. Thus, Defendants have not  
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26 <sup>3</sup> Defendants’ reliance on 28 U.S.C. § 1443 as a basis for the removal of alleged civil rights  
 27 violations is misplaced because there are no allegations which would support an application of that  
 28 statute. See Georgia v. Rachel, 384 U.S. 780, 792 (1966) (holding that the removal language  
 contained in 28 U.S.C. § 1443 “must be construed to mean any law providing for specific civil rights  
 stated in terms of *racial equality*.”).

1 shown the existence of federal question jurisdiction.

### **C. Diversity Jurisdiction**

Pursuant to 28 U.S.C. § 1332, federal courts have original jurisdiction where (1) opposing parties are citizens of different states and (2) the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Where diversity is cited as a basis for jurisdiction, removal is not permitted if a defendant in the case is a citizen of the state in which the plaintiff originally brought the action, even if the opposing parties are diverse. See 28 U.S.C. § 1441(b).

8        Here, removal is improper based on diversity jurisdiction because this case was originally  
9 filed in a California state court and Defendants, who each list California addresses in their pleadings,  
10 are citizens of California. See, e.g., Docket Item No. 1. Thus, even assuming the parties are diverse,  
11 28 U.S.C. § 1441(b) prohibits removal by Defendants on this ground.

Because this court is without subject matter jurisdiction, it does not have the power to issue any further orders in this case. Ex Parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868) (“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”). Defendants must therefore raise any claims or defenses before the state court on remand.

## II. ORDER

19 Based on the foregoing, Plaintiffs' Motion to Remand is GRANTED. The Clerk shall  
20 remand this action to Santa Clara County Superior Court and close this file. All other pending  
21 matters are TERMINATED AS MOOT.

22 The hearing scheduled for July 13, 2012, is VACATED.

## 23 || IT IS SO ORDERED.

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25 Dated: June 5, 2012

  
EDWARD J. DAVILA  
United States District Judge